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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,416	08/28/2008	Keith Alan Crutcher	81599-004US0	2428
50670 7590 12/13/2010 DAVIS WRIGHT TREMAINE LLP/Los Angeles 865 FIGUEROA STREET SUITE 2400 LOS ANGELES, CA 90017-2566				
EXAMINER				
LUKTON, DAVID				
ART UNIT		PAPER NUMBER		
1654				
NOTIFICATION DATE		DELIVERY MODE		
12/13/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/586,416

Applicant(s)

CRUTCHER, KEITH ALAN

Examiner

DAVID LUKTON

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-27 and 29-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A restriction is imposed, as set forth below. First, however, the following subgenera are defined:

G1: the composition comprises one and only one polypeptide, and no other compound is present in the composition;

G2: the composition comprises two or more polypeptides, and no other compound is present in the composition;

G3: the composition comprises one and only one polypeptide, and at least one other non-peptide compound (or pharmaceutically acceptable vehicle) is present in the composition;

G4: the composition comprises two or more polypeptides, and at least one other non-peptide compound (or pharmaceutically acceptable vehicle) is present in the composition.

G5: the polypeptide present in the composition is of formula I;

G6: the polypeptide present in the composition is of formula IV;

G7: the polypeptide present in the composition is neither of formula I nor of formula IV.

. . . .

Restriction to one of the following inventions is required under 35 U.S.C. §121:

- 1) Claims 1-24, 29, 35, 36, 38, 39, drawn to a method of treating a bacterial infection.
- 2) Claims 25 and 27, drawn to a polypeptide comprising a repeat of apoE₁₄₁₋₁₄₉, or a medicament comprising the same.
- 3) Claims 26 and 37, drawn to a polypeptide comprising any of SEQ ID NOS: 3, 4, 67, 68, 94, or 95, or a medicament comprising the same.

Art Unit: 1654

- 4) Claims 30 and 40, drawn to a polynucleotide.
- 5) Claims 31-33, drawn to a method of preventing or "treating" a contamination.
- 6) Claim 34, drawn to a contact lens coated with a peptide.

The claimed inventions are distinct.

Applicant is advised that for the response to this requirement to be complete, an election of the invention to be examined must be indicated, even if the requirement is traversed (37 C.F.R. 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

. . . .

In addition to the foregoing, applicants are required under 35 U.S.C. §121 to elect disclosed species (as follows) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In the event that Group 1 is chosen for initial examination, election is required of each of the following:

- a) one of the following: G1 or G2 or G3 or G4;
- b) a specific bacteria (e.g., *Staphylococcus Pseudomonadales*) that is causing the infection in the elected method;
- c) one of the following: G5 or G6 or G7;
- d) in the event that G5 has been elected, further election is required of each of the following that is present in formula I: a specific "a", a specific "b", a specific "c", a specific "x", a specific "y", a specific "z", a specific "a'", a specific "b'", a specific "c'", a specific "x'", a specific "y'", and a specific "z'";
- e) in the event that G5 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election in (d)), in which each

amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”;

f) in the event that G6 has been elected, further election is required of each of the following that is present in formula IV: a specific “a”, a specific “b”, a specific “c”, a specific “x”, a specific “y”, a specific “z”, a specific “a’”, a specific “b’”, a specific “c’”, a specific “x’”, a specific “y’”, and a specific “z’”;

g) in the event that G6 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election in (f)), in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”; and

h) in the event that G7 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election of G7) in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”.

. . . .

In the event that Group 2 is chosen for initial examination, election is required of each of the following:

a) one of the following: (i) a polypeptide *per se*, or (ii) a medicament that contains a polypeptide;

b) one of the following: (i) the polypeptide is of formula I or (ii) the polypeptide is of formula IV; or (iii) the polypeptide is neither of formula I nor of formula IV; and

c) a specific and fully defined polypeptide (consistent with the election in (b)) in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”.

. . . .

In the event that Group 3 is chosen for initial examination, election is required of each of the following:

- a) one of the following: (i) a polypeptide *per se*, or (ii) a medicament that contains a polypeptide; and
- b) a specific and fully defined polypeptide in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”;

. . . .

In the event that Group 4 is chosen for initial examination, election is required of a specific polypeptide that is encoded by the polynucleotide.

. . . .

In the event that Group 5 is chosen for initial examination, election is required of each of the following:

- a) one of the following: G1 or G2 or G3 or G4;
- b) a specific bacteria (e.g., *Staphylococcus Pseudomonadales*) that is causing the contamination in the elected method;
- c) one of the following: G5 or G6 or G7;
- d) in the event that G5 has been elected, further election is required of each of the following that is present in formula I: a specific “a”, a specific “b”, a specific “c”, a specific “x”, a specific “y”, a specific “z”, a specific “a”, a specific “b”, a specific “c”, a specific “x”, a specific “y”, and a specific “z”;
- e) in the event that G5 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election in (d)), in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”;
- f) in the event that G6 has been elected, further election is required of each of the following that is present in formula IV: a specific “a”, a specific “b”, a specific “c”, a specific “x”, a specific “y”, a specific “z”, a specific “a”, a specific “b”, a specific “c”, a specific “x”, a specific “y”, and a specific “z”;
- g) in the event that G6 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election in (f)), in which each

amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”;

h) in the event that G7 has been elected, further election is required of a specific and fully defined polypeptide (that is consistent with the election of G7) in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”;

i) one of the following (i) an object is coated, or (ii) a surface is coated;

j) in the event that an object is coated, election is required of a specific object (e.g., a contact lens or a stent); and

k) in the event that a surface is coated, election is required of a specific surface (e.g., a kitchen surface);

. . . .

In the event that Group 6 is chosen for initial examination, election is required of a specific and fully defined polypeptide in which each amino acid is identified, and which peptide is described without open-ended language such as “comprising” or “containing”.

. . . .

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a generic claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentable distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103 of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

/David Lukton/

Primary Examiner, Art Unit 1654